

ORIGINAL  
FILED

FEB 24 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

1 Martin K. Deniston (State Bar No. 106737)  
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EDELMAN & DICKER LLP**  
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5 Attorneys for Defendant  
6 Coudert Brothers LLP and Defendants identified in Exhibit 1

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SENORX, INC.,

11 Plaintiff,

12 v.

13 COUDERT BROTHERS, LLP, and  
DOES 1 - 500,

14 Defendants.

15 Case No:

16 C 07 1075  
17 NOTICE OF REMOVAL OF  
18 ACTION UNDER 28 U.S.C. § 1452  
19 AND BANKRUPTCY RULE 9027

20 SC

21 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

22 PLEASE TAKE NOTICE that Defendants Coudert Brothers LLP, the debtor  
23 and debtor in possession in a Chapter 11 case pending in the United States  
24 Bankruptcy Court for the Southern District of New York, Case No. 06-12226  
25 (RDD), joined by its co-defendants and former partners Charles E. Aster, Steven  
26 H. Becker, Philippe Bennett, Pamela T. Church, Charles H. Critchlow, Edmund S.  
27

28

1 Cohen, Jeffrey E. Cohen, James C. Colihan, William K. Coulter, Richard N. Dean,  
2 Richard De Palma, Robert L. Eisen, Joseph Farrell, Kay Georgi, Tara K. Giunta,  
3 Kevin W. Goering, Deborah Goldstein, Michael J. Hagan, Robert E. Hanlon,  
4 Gerard V. Hannon, Andrew Hedden, Janet Hernandez, Stephen M. Hudspeth, W.  
5 Michael Kelly, Frederick P. Konta, George J. Martin, Jr., Brian McGunigle, Barry  
6 Metzger, Owen Nee, Marilyn S. Okoshi, Richard M. Ornitz, Kenneth R. Page,  
7 Robert F. Pietrowski, Jr., Darrell Prescott, Clyde E. Rankin, III, Richard Reilly,  
8 Thomas Rice, Olga Sirodoeva, James B. Sitrick, Roger D. Stark, Edward H.  
9 Tillinghast, III, Charles H. Wagner, Roger B. Wagner, Christopher M. Wells,  
10 Anthony Williams, Mary F. Voce, John M. Gurley, and Carol B. Stubblefield  
11 (collectively, "Individual Partner Defendants") hereby remove to this honorable  
12 Court the State Court action described below:

13 1. On October 27, 2004, Plaintiff SenoRx, Inc. commenced this action  
14 for legal malpractice in the Superior Court of the State of California for the County  
15 of San Francisco, captioned *SenoRx, Inc. vs. Coudert Brothers, LLP, and Does 1-*  
16 *500*, CGC 04435849. An Answer on behalf of Coudert Brothers LLP was filed on  
17 January 21, 2005. A true and correct copy of all process and pleadings are  
18 attached hereto and incorporated as Exhibit "1."

19 2. On November 3, 2005, and on January 25, 2006, SenoRx filed Doe  
20 amendments with respect to the Complaint for purposes of substituting specifically  
21 named individual defendants for fictitiously named defendants. On those dates,  
22

1 SenoRx named Doe defendants, including the Individual Partner Defendants who  
2 are former limited liability partners of Coudert Brothers LLP and none of whom  
3 are California residents or rendered any services to SenoRx.  
4

5       3. In March 2006, a demurrer was filed on behalf of the Individual  
6 Partner Defendants, arguing that the partners of a limited liability partnership who  
7 were not involved in the provision of services to SenoRx have no vicarious liability  
8 for the liabilities of the partnership with respect to such services. The court  
9 sustained this demurrer, and sustained three subsequent demurrers on the same  
10 grounds, each time giving SenoRx leave to amend its complaint.  
11  
12

13       4. On September 22, 2006, Coudert Brothers LLP filed a Chapter 11  
14 Bankruptcy Petition, in the United States Bankruptcy Court for the Southern  
15 District of New York entitled In re Coudert Brothers LLP, Case No. 06-12226.  
16

17       5. The Fourth Amended Complaint was filed on November 8, 2006. On  
18 January 23, 2007, the court overruled the Individual Partner Defendants' demurrer  
19 to the Fourth Amended Complaint.  
20

21       6. On January 31, 2007, SenoRx filed a proof of claim in the Coudert  
22 Brothers LLP bankruptcy case, and this action seeks the same recovery as the  
23 claim set forth on that proof of claim.  
24

25       7. Pursuant to Bankruptcy Rule 9006(b)(1), the time within which Civil  
26 Actions may be removed under U.S.C. Section 1452 and Bankruptcy Rule 9027(a)  
27 was extended by 90 days, through and including March 21, 2007, by United States  
28

1 Bankruptcy Judge Robert D. Drain of the Southern District of New York. A true  
2 and correct copy of the Order Extending the 90-Day Period Within Which to  
3 Remove is attached hereto and incorporated as Exhibit "2."  
4

5       8. This action is one which may be removed by any party pursuant to the  
6 provisions of 28 U.S.C. Sections 1452 and 1334 and Bankruptcy Rule 9027. In  
7 this case Plaintiff SenoRx claims that the Individual Partner Defendants are  
8 allegedly liable as guarantors of any judgment obtained against Coudert Brothers  
9 LLP to the extent of Coudert Brothers LLP's self-insured retention under the  
10 insurance policy applicable to this case if Coudert Brothers LLP does not satisfy  
11 the self-insured retention. Because the claim set forth by Plaintiff SenoRx against  
12 the Individual Partner Defendants is based on their alleged guarantee of any  
13 judgment based upon the liability of Coudert Brothers LLP, litigation of the  
14 alleged liability of the Individual Partner Defendants would lead to indemnity  
15 claims against Coudert Brothers LLP thus affecting the bankruptcy estate. Further,  
16 Coudert Brothers LLP's bankruptcy estate is affected by continuing litigation  
17 against the Individual Partner Defendants, as the defense costs of such litigation  
18 will deplete the bankrupt estate and potentially the insurance policies belonging to  
19 Coudert Brothers LLP.  
20  
21       9. This is a non-core proceeding as it is not a cause of action created or  
22 determined by federal bankruptcy laws. Coudert Brothers LLP and the Individual  
23  
24

25       9. This is a non-core proceeding as it is not a cause of action created or  
26 determined by federal bankruptcy laws. Coudert Brothers LLP and the Individual  
27  
28

1 Partner Defendants do not consent to final orders or judgment of the bankruptcy  
2 judge.  
3

4 10. Notwithstanding this removal, Coudert Brothers LLP and the  
5 Individual Partner Defendants do not waive and specifically reserve any and all  
6 objections, exceptions or defenses to the Operative Complaint (Fourth Amended  
7 Complaint) herein, including but not limited to, moving to have this matter  
8 dismissed, stayed and/or transferred to another court.  
9

10 Dated: February 21, 2007

11 WILSON, ELSER, MOSKOWITZ,  
12 EDELMAN & DICKER LLP

13 By:

14   
15 Martin K. Deniston  
16 Attorneys for Defendant  
17 COUDERT BROTHERS LLP and  
18 Defendants identified in Exhibit 1  
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## CIVIL COVER SHEET

JS 44 - CAND (Rev. 11/04)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

**I. (a) PLAINTIFFS**

SenoRx, Inc.

**DEFENDANTS**

COUDERT BROTHERS LLP, Charles E. Aster,  
Steven H. Becker, Philippe, Bennett, etc.  
[see Exhibit 1]

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** New York  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED.

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**  
Michael J. Piuze (State Bar No. 51342  
LAW OFFICES OF MICHAEL J. PIUZE  
11755 Wilshire Blvd., Suite 1170  
Los Angeles CA 90025  
310-312-1102

**ATTORNEYS (IF KNOWN)**  
Martin K. Deniston (State Bar No. 106737)  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DI  
555 South Flower Street, Suite 2900  
Los Angeles, CA 90071  
213-443-5100

**II. BASIS OF JURISDICTION** (PLACE AN 'X' IN ONE BOX ONLY)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**IV. ORIGIN**

- |  |  |  |   |  |   |  |
|--|--|--|---|--|---|--|
| <input type="checkbox"/> Original Proceeding | <input checked="" type="checkbox"/> Removed from State Court | <input type="checkbox"/> Remanded from Appellate Court | <input type="checkbox"/> Reinstated or Reopened | <input type="checkbox"/> Transferred from Another district (specify) _____ | <input type="checkbox"/> Multidistrict Litigation | <input type="checkbox"/> Appeal to District Judge from Magistrate Judgment |
|--|--|--|---|--|---|--|

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>PROPERTY RIGHTS</b>	<b>400 State Reapportionment</b>
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury	<input type="checkbox"/> 422 Appeal 28 USC 158	<b>410 Antitrust</b>
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>430 Banks and Banking</b>
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault Libel & Slander	<input type="checkbox"/> 365 Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<b>450 Commerce/ICC Rates/etc.</b>
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 460 Deportation	<b>470 Racketeer Influenced and Corrupt Organizations</b>
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<b>810 Selective Service</b>
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<b>850 Securities/Commodities/ Exchange</b>
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<b>875 Customer Challenge 12 USC 3410</b>
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<b>SOCIAL SECURITY</b>	<b>891 Agricultural Acts</b>
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 HIA (1395ff)	<b>892 Economic Stabilization Act</b>
<input type="checkbox"/> 195 Contract Product Liability	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 862 Black Lung (923)	<b>893 Environmental Matters</b>
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus:	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<b>894 Energy Allocation Act</b>
<b>REAL PROPERTY</b>	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<b>895 Freedom of Information Act</b>
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 443 Housing	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	<b>900 Appeal of Fee Determination Under Equal Access to Justice</b>
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<b>FEDERAL TAX SUITS</b>	<b>950 Constitutionality of State Statutes</b>
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<b>890 Other Statutory Actions</b>
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 Amer w/disab - Empl	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer w/ disab - Other			
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 480 Consumer Credit			
	<input type="checkbox"/> 490 Cable/Satellite TV			

**VI. CAUSE OF ACTION** (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) This is a Notice of Removal being filed pursuant to USCS Bankruptcy Rule 9027 and 28 U.S.C. Section 1452..

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:  
JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S) IF ANY** PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT** (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)  SAN FRANCISCO/OAKLAND  SAN JOSE

DATE

February 21, 2007

SIGNATURE OF ATTORNEY OF RECORD

Martin K. Deniston

**EXHIBIT 1****Case No.:****SENORX V. COUDERT BROTHERS LLP AND DOES 1 - 500**

Charles E. Aster,  
Steven H. Becker,  
Pamela T. Church,  
Charles H. Critchlow,  
Edmund S. Cohen,  
Jeffrey E. Cohen,  
James C. Colihan,  
William K. Coulter,  
Richard N. Dean,  
Richard De Palma,  
Robert L. Eisen,  
Joseph Farrell,  
Kay Georgi,  
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Gerard V. Hannon,  
Andrew Hedden,  
Janet Hernandez,  
Stephen M. Hudspeth,  
W. Michael Kelly,  
Frederick P. Konta,  
George J. Martin, Jr.,  
Edwin S. Matthews, Jr.,  
Brian McGunigle,  
Barry Metzger,  
Owen Nee,  
Marilyn S. Okoshi,  
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Roger B. Wagner,  
Christopher M. Wells,  
Anthony Williams,  
Philippe Bennett